

DISTRIBUTABLE (30)

SHORAI KUDZAI MUCHEMWA
v
CM GROBBLER

SUPREME COURT OF ZIMBABWE
ZIYAMBI JA, GWAUNZA JA & MAVANGIRA JA
HARARE, NOVEMBER 21, 2016 & MAY 15, 2017

S M Hashiti, for the appellant

T Magwaliba, for the respondent

ZIYAMBI JA:

[1] This is an appeal against an order of the High Court interdicting the appellant from evicting the respondent from certain property known as Lot 1 of Buena Vista Farm, Goromonzi.

[2] The farm was gazetted in 2003 and the respondent, being the former owner or occupier of the farm, did not vacate it within the 90 days prescribed by s 3 of the Gazetted Land (Consequential Provisions) Act, [*Chapter 20:28*] (“the Act”). Section 3 provides as follows:

“3. Occupation of Gazetted land without lawful authority

- (1) Subject to this section, no person may hold, use or occupy Gazetted land without lawful authority.
- (2) Every former owner or occupier of Gazetted land—
 - (a) referred to in paragraph (a) of the definition of “Gazetted land” in section 2(1), shall cease to occupy, hold or use that land forty-five days after the fixed date, unless the owner or occupier is lawfully authorised to occupy, hold or use that land;
 - (b) referred to in paragraph (b) of the definition of “Gazetted land” in section 2(1), shall cease to occupy, hold or use that land forty-five days after the date when the land is identified in accordance with section 16B(2)(a)(iii) of the Constitution, unless the owner or occupier is lawfully authorised to occupy, hold or use that land:

Provided that—

- (i) the owner or occupier of that land referred to in paragraph (b) may remain in occupation of his or her living quarters on that land for a period of not more than ninety days after the date when the land is identified;(ii) the owner or occupier shall cease to occupy his or her living quarters after the period referred to in *proviso* (i).
- (2) If a former owner or occupier of Gazetted land who is not lawfully authorised to occupy, hold or use that land does not cease to occupy, hold or use that land after the expiry of the appropriate period referred to in subsection (2)(a) or (b), or, in the case of a former owner or occupier referred to in section 2(b), does not cease to occupy his or her living quarters in contravention of proviso (ii) to section 2(b), he or she shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.
- (3) Any person, other than a person referred to in subsection (2), who contravenes subsection (1), shall be guilty of an offence and liable to a fine not exceeding level seven or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.
- (4) A court which has convicted a person of an offence in terms of subsection (3) or (4) shall issue an order to evict the person convicted from the land to which the offence relates

[3] The respondent was charged with, and convicted of, contravening s 3 of the Act. He was sentenced to a fine of \$100 and ordered to vacate the farm by November 6 2013. He noted an appeal against both the conviction and the sentence. Thereafter having sought, and obtained, on the 24 December, 2013, an order staying execution of the judgment pending the determination of the appeal, he continued to occupy the farm.

[4] On the 28 July 2015, the appellant was issued with an offer letter for part of the farm and sought to evict the respondent therefrom. This led to the filing by the respondent of an urgent application in the High Court for the order mentioned at the beginning of this judgment¹.

¹ [Para [1] *supra*

Dissatisfied with the judgment of the High Court, the appellant noted this appeal on the 10 November 2015.

[5] At the hearing, it came to the attention of the parties that the appeal filed by the respondent against the conviction and sentence imposed by the magistrate had been dismissed on the 10 August 2016.

[6] While it is apparent to us that there is merit in the grounds of appeal raised by the appellant attacking, in particular, the propriety of the suspension by a judge of the High Court of the execution of the judgment of the magistrate, we are of the view that the dismissal of the appeal by the High Court is dispositive of the appeal.

[7] Having said this, the Court expresses its disquiet at the allegations that the appellant forcibly, and without regard to due process of law, attempted to evict the respondent and his family from the farm. Granted, this was an urgent application for an interim order and no affidavits were filed by the appellant in response to these allegations. However, litigants are reminded that our courts have stressed that due process must always be employed in asserting one's rights and a litigant ignores this admonition at his peril.

[8] In the result, it is the unanimous decision of the Court that the appeal ought to be allowed. Since no costs were sought in the notice of appeal, none is granted. It is therefore ordered as follows:

1. The appeal is allowed with each party bearing its own costs.
2. The judgment of the court *a quo* is set aside and substituted with the following: -

“The application is dismissed with costs”

GWAUNZA JA:

I agree

MAVANGIRA JA:

I agree

Hussein Ranchod & Co, appellant's legal practitioners

Mugiya & Macharaga Law Chambers, respondent's legal practitioners